

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EDWARD ARTHUR	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 02-CV-2931
	)	
THE UNITED STATES OF AMERICA	)	
	)	
Defendant.	)	
	)	

**PLAINTIFF EDWARD ARTHUR S MOTION FOR RECONSIDERATION  
OR ALTERNATIVELY CLARIFICATION OF THE COURT S  
SEPTEMBER 15, 2003 MEMORANDUM OPINION AND ORDER**

Plaintiff, through his undersigned attorneys, and pursuant to Local Rule of Civil Procedure 7.1(g), submits this Motion To Reconsider Or Alternatively Clarify The Court s September 15, 2003 Memorandum Opinion and Order granting Defendant United States Motion To Dismiss in part and in support of that Motion avers as follows:

1. In this matter, Plaintiff s Complaint asserts claims against Defendant United States for: (1) negligence; (2) unseaworthiness; and (3) failure to pay maintenance and cure. In adjudicating Defendant United States Motion to Dismiss (Or Alternatively For Summary Judgment), this Court dismissed entirely Plaintiff s claims for negligence and unseaworthiness, and dismissed Plaintiff s maintenance and cure related claims for any time period prior to May 14, 2001. See, the Court s September 15, 2003 Memorandum and Order.

2. Plaintiff has reviewed the Court s September 15, 2003 Memorandum and is

not entirely sure whether the Court based the granting of Defendant United States motion to dismiss, in part, upon: (1) a conclusion that the Plaintiff did not meet the requirements of Federal Rule of Civil Procedure 15(c) also known as the relation back of the complaint; or (2) a conclusion that the Plaintiff did not meet the requirements of Federal Rule of Civil Procedure 15(a) such that leave is denied to amend his complaint against the United States.

3. Plaintiff's uncertainty as to the basis of the Court's ruling is founded in the following: (1) the Court appears to conclude that Plaintiff has (for purposes of adjudicating Defendant United States motion to dismiss) met the requirements of the Rule 15(c) relation back under Third Circuit law<sup>1</sup>; (2) the Court appears to base its decision on a Rule 15(a) analysis; (3) the Court had already considered in May 2003 whether the Plaintiff had satisfied the requirements of Rule 15(a) and in May 2003 the Court decided that issue in Plaintiff's favor granting Plaintiff leave to amend his Complaint on May 6, 2003; and (4) there is nothing within the Court's September 15, 2003 Memorandum or Order which indicates that the May 6, 2003 Order is vacated, amended, clarified or otherwise modified.

4. Plaintiff moves for reconsideration of the Court's September 15, 2003 Memorandum and Order because Plaintiff respectfully submits that if the Court concluded that Plaintiff had met the requirements of Rule 15(c) to relate his Complaint

---

<sup>1</sup> See, the Court's September 15, 2003 Memorandum at p. 9: Keeping in mind the Third Circuit's generous reading of Rule 15(c)(3)(B), we will assume that plaintiff's failure to sue the United States at the outset was an excusable factual or legal mistake and that all the requirements under Rule 15(c) have been met.

back, this Court should have concluded that all of Plaintiff s claims which accrued on or after May 17, 2000 survive Defendant United States motion to dismiss.

5. Plaintiff has attached a Memorandum of Law to this Motion setting out in more detail the basis for seeking Reconsideration or Alternatively Clarification of the Court s September 15, 2003 rulings.

WHEREFORE, Plaintiff respectfully requests that the Court reconsider and vacate the September 15, 2003 Memorandum and Opinion, and enter the Proposed Order attached to this Motion.

---

Brian P. McCafferty, Esq.  
Provost & Umphrey Law Firm, LLP  
1617 JFK Boulevard, Suite 640  
Philadelphia, Pennsylvania 19103  
(215) 569-8840  
(215) 569-9070 (fax)

ATTORNEY FOR PLAINTIFF

Dated: September 29, 2003

**CERTIFICATE OF SERVICE**

I, I, Brian P. McCafferty, Esq., hereby I, Brian P. McCafferty, Esq., hereby certI, Brian P. McC  
MotionMotion For Reconsideration of the Court s September 15, 2003 Memorandum and Order  
was served upon the following counsel by first class mail on September 29, 2003:

Mindee Reuben, Esquire  
Fox Rothschild O'Brien & Frankel, LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA 19103

Michael T. Hollister, Esquire  
Weber Gallagher Simpson, et al.  
The Belgravia Building  
1811 Chestnut Street, Suite 600  
Philadelphia, PA 19103

---

Brian P. McCafferty